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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 14, 15, and 52

**[FAC 2005-78; FAR Case 2014-001; Item I; Docket No. 2014-0001,
Sequence No. 1]**

RIN 9000-AM78

**Federal Acquisition Regulation; Incorporating Section K in
Contracts**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to standardize the incorporation by reference of representations and certifications in contracts.

DATES: Effective: **[INSERT DATE 30 DAYS AFTER PUBLICATION
IN THE FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at (202) 501-1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-78, FAR Case 2014-001.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the Federal Register at 78 FR 22615 on April 23, 2014, to revise the language at FAR subpart 4.12, Representations and Certifications, and add a new clause at FAR 52.204-19 to standardize the incorporation by reference of representations and certifications in contracts, regardless of which contract award form is used. FAR clause 52.212-4 has a new paragraph (v) to cover this issue for commercial items. One respondent submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Analysis of changes

One editorial change was made to the proposed rule as a result of the public comments.

B. Analysis of public comments

1. Edits

Comment: The respondent recommended adding commas to the changes in FAR parts 14 and 15.

Response: Instead of commas, the word "see" was added.

2. Out of scope

Comment: The respondent suggested revising the last sentence in the introductory paragraph of FAR 4.1202 (which will become 4.1202(a)) to include a reference to either 52.212-1 or 52.212-3.

Response: No changes were made for the out-of-scope suggestion.

Comment: The respondent suggested that the FAR matrix be revised to indicate that 52.204-6, 52.204-7, 52.204-13, and possibly, 52.204-12 are not applicable to commercial items.

Response: No changes were made for the out-of-scope suggestion.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The objective of this final rule is to standardize the incorporation by reference of representations and certifications in contracts.

No issues were raised by the public in response to the initial regulatory flexibility analysis. There are no reporting, recordkeeping, or other compliance requirements in the final rule. This final rule is an internal procedure requiring the contracting officer to acknowledge the small entity's representations and certifications by incorporating them by reference in the contract award document.

This final rule does not revise or impact the existing representations and certifications submitted by small entities; therefore, this final rule should have no significant economic impact on a substantial number of small entities.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 14, 15, and 52

Government procurement.

Dated: November 17, 2014.

William Clark,
Acting Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 14, 15, and 52 as set forth below:

1. The authority citation for 48 CFR parts 4, 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE MATTERS

2. Amend section 4.1200 by—

a. Removing from the end of paragraph (a) the word “and”;

b. Removing from the end of paragraph (b) the period and adding “; and” in its place; and

c. Adding paragraph (c) to read as follows:

4.1200 Scope.

* * * * *

(c) Incorporate by reference the contractor’s representations and certifications in the awarded contract.

3. Amend section 4.1201 by adding paragraph (d) to read as follows:

4.1201 Policy.

* * * * *

(d) The contracting officer shall incorporate the representations and certifications by reference in the

contract (see 52.204-19, or for acquisitions of commercial items see 52.212-4(v)).

4. Amend section 4.1202 by—

a. Redesignating paragraphs (a) through (cc) as paragraphs (a)(1) through (29), respectively;

b. Designating the introductory paragraph as paragraph (a); and

c. Adding a new paragraph (b) to read as follows:

4.1202 Solicitation provision and contract clause.

* * * * *

(b) The contracting officer shall insert the clause at 52.204-19, Incorporation by Reference of Representations and Certifications, in solicitations and contracts.

PART 14—SEALED BIDDING

5. Amend section 14.201-1 by adding a sentence at the end of paragraph (c) to read as follows:

14.201-1 Uniform contract format.

* * * * *

(c) * * * The representations and certifications shall be incorporated by reference in the contract by using 52.204-19 (see 4.1202(b)) or for acquisitions of commercial items see 52.212-4(v).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

6. Amend section 15.204-1 by revising the last sentence of paragraph (b) to read as follows:

15.204-1 Uniform contract format.

* * * * *

(b) * * * The representations and certifications are incorporated by reference in the contract by using 52.204-19 (see 4.1202(b)) or for acquisitions of commercial items see 52.212-4(v).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204-8 [Amended]

7. Amend section 52.204-8 by removing from the introductory text "4.1202" and adding "4.1202(a)" in its place.

8. Add section 52.204-19 to read as follows:

52.204-19 Incorporation by Reference of Representations and Certifications.

As prescribed in 4.1202(b), insert the following clause.

INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS
([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN
THE FEDERAL REGISTER])

The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

9. Amend section 52.212-4 by revising the date of the clause; and adding paragraph (v) to read as follows:

52.212-4 Contract Terms and Conditions—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS ([INSERT
ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER])

* * * * *

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

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